

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARK F. DURBIN,

Plaintiff,

vs.

THE STATE OF WASHINGTON and  
KING COUNTY, as Respondeats Superior  
for, with, together, and employing KING  
COUNTY PROSECUTOR DAN SATTERBERG,  
KING COUNTY SHERIFF'S DEPT., KING  
COUNTY SUPERIOR COURT, KING COUNTY  
JAIL, JESSE DUBOW OF KING COUNTY  
NORTHWEST DEFENDERS DIVISION,  
WASHINGTON STATE DEPT. OF SOCIAL and  
HEALTH SERVICES, WESTERN STATE  
HOSPITAL, KEENA JAVIER, KELLON PITTS,  
AMANDA ZERGER and ZACHERY BOYD et al.,  
related to KING COUNTY SUPERIOR COURT  
CASE #19-1-01222-2 SEA,

Defendants.

No. 22-cv-200-TL

CIVIL RIGHTS COMPLAINT  
(Amended)  
42 U.S.C. §1983

JURY DEMAND

This amended complaint simply  
corrects the spelling of defendant  
Kellan Pitts as Kellon Pitts only.

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

Plaintiff Mark F. Durbin complains and alleges;

I. PARTIES

1.1 Plaintiff, Mark F. Durbin is a natural person and resident of King County, in  
the Western District of Washington State.

1           1.2       Defendant State of Washington is a state established within the United  
2 States of America bound to comport with the United States Constitution, the Supreme Law  
3 of the Land, and is responsible for enforcing and defending the laws of the State of  
4 Washington including the Washington Constitution, and stands as Respondeat Superior as  
5 to all Defendants involved in causing damage, injury and deprivation to Plaintiff in violation  
6 of Plaintiff's civil rights in this matter in relation to King County Superior Court Case #19-1-  
7 01222-2 SEA.

8           1.3       Defendant King County Washington is a Municipal Corporation incorporated  
9 under the laws of the State of Washington with its principle place of business in the State of  
10 Washington, and is bound to comport with the United States Constitution, the Supreme Law  
11 of the Land, and stands along with Washington State as Respondeat Superior as to all  
12 Defendants involved in causing damage, injury and deprivation to Plaintiff in violation of  
13 Plaintiff's civil rights in this matter in relation to King County Superior Court Case #19-1-  
14 01222-2 SEA.

15           1.4       Defendants King County Prosecutor Dan Satterberg, King County Sheriff's  
16 Dept., King County Superior Court, King County Jail, Jesse Dubow of King County  
17 Northwest Defenders Division, Washington State Dept. of Social and Health Services  
18 ("DSHS"), Western State Hospital ("WSH"), Keena Javier (neighboring King County resident  
19 at the time and prosecuting accuser), Kellon Pitts, Amanda Zerger, and Zachery Boyd  
20 (prosecuting accusers with Javier) et al., all bound to comport with the United States  
21 Constitution, the Supreme Law of the Land, overtly or covertly acted as employees, agents,  
22 servants or operatives, for, with, together and/or employed by Defendants the State of  
23 Washington and King County causing damage, injury and deprivation to Plaintiff in violation  
24 of Plaintiff's civil rights in this matter in relation to King County Superior Court Case #19-1-  
25 01222-2 SEA.

## II. JURISDICTION and VENUE

2.1 This action arises under federal law 42 U.S.C. §1983 to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a right, privilege or immunity secured to plaintiff under the United States Constitution and laws. The Court has jurisdiction pursuant to 28 U.S.C. §1331. Venue is proper pursuant to 28 U.S.C. §1391(b).

2.2 For the purposes of commencing a lawsuit against the State of Washington and King County, Plaintiff filed a tort claim with each to their Office of Risk Management conforming to the requirements of RCW 4.92. Plaintiff has allowed at least sixty (60) days to expire between the date of presentment of his tort claim to their Office of Risk Management and the filing of this action.

## III. FACTS / STATEMENT OF CLAIM

3.1 On December 19<sup>th</sup>, 2018, Mark Durbin ("Plaintiff") was accosted, threatened and impeded at his home at 63434 NE 196<sup>th</sup> Street in Baring, Washington, in King County, by Kellon Pitts and Keena Javier whilst he was stringing a fence line between his and Keena Javier's property adjacent to the east in preparation for installing a fence around his property when he stepped inside his residence and soon noticed that Pitts was on his property brandishing a large meat cleaver and that he had just cut down Plaintiff's fence string line. Plaintiff then stepped outside onto his front deck and asked Pitts what he thought he was doing. Pitts, waving the cleaver, told Plaintiff to: "Get a survey." Plaintiff then told Pitts he was going to contact police and then immediately called into 911 to report Pitts' threatening behavior armed with a meat cleaver, trespass, and property damage/vandalism. Javier and her group had been constantly told and notified that they were not to trespass on Plaintiff's property and it was well posted about his property. This was a demand by Plaintiff that Javier and her band repeatedly and flagrantly ignored.



1           3.2       As Plaintiff waited for police to respond, he cut a garden hose Javier had  
2 defiantly run across his backyard from her residence adjacent to the east of his property to  
3 the well on the property adjacent to the west of his property for water supply purposes  
4 contrary to Plaintiff's insistence that she not do so by trespass or occupation of his property  
5 in any way or by any means. The Plaintiff's family has owned their property in Baring since  
6 1968, some 50 years at that time. The property was surveyed, and Plaintiff had measured  
7 off and located boundary markers to the property in preparation to stringing his fence lines.  
8 Additionally, Plaintiff intended to obtain another property survey prior to erecting a fence.

9           3.3       Javier had been in her property next door to Plaintiff for about 8 years or so,  
10 and during that time she and her crowd deliberately worked to be a constant vexation to  
11 Plaintiff. After a time it became apparent that Javier was surveilling Plaintiff and was  
12 working along with neighboring persons, including Howard A. Fraga and Randy Podhorsky  
13 (property holders adjacent west), to annoy, menace, sabotage, hinder, harm and eliminate  
14 him and his family. Plaintiff alleges that Javier and Pitts et al. were acting with and for other  
15 Defendants herein to wrest the land/property from owner/occupant Plaintiff and his family  
16 and that they were working to obtain it unimproved and in "distressed" condition. (Javier  
17 has since sold her home next to Plaintiff to King County, and she telephoned and informed  
18 Plaintiff's family residing out of state, who do not really know her, that the County was  
19 interested in buying up properties next to the Skykomish river in Baring.)

20           3.4       After Plaintiff cut Javier's garden hose crossing over his property and  
21 returned inside his home, he noticed Javier and Pitts exit Javier's residence, walk out to the  
22 street to the south, head west down the street in front of Plaintiff's property and enter the  
23 property adjacent to the west and then head north along that side of Plaintiff's home toward  
24 his backyard. Plaintiff then went to the back door of his residence holding a small .22  
25 caliber pistol that he intended to use to issue a harmless report straight up into the air

1 (warning shot) should Javier and Pitts choose to exhibit further hostility towards him by  
2 trespass onto, and invasion of, Plaintiff's property with malicious intent.

3 3.5 Plaintiff witnessed Javier and Pitts come alongside his home and they  
4 noticed him watching them from his open back door. Pitts then said to Plaintiff: "What if  
5 your house burns down tonight with you in it." Pitts then notice that Javier's garden hose  
6 running through Plaintiff's backyard was cut. Pitts then told Javier: "He cut the hose."  
7 Javier, angrily then ordered Pitts to: "Go cut up his sh\*\* (expletive), at which point Pitts  
8 stormed onto Plaintiff's property headed towards his private water well equipment with  
9 malicious intent to destroy Plaintiff's personal property and equipment, set him back, and  
10 cripple his living conditions. Hence, Plaintiff issued a harmless report straight up into the air  
11 from his small arms to repel Pitts' and Javier's invasive attack on the sovereignty, security,  
12 and tranquility of his home, at which point they both decided to vacate Plaintiff's property  
13 and head home east through his backyard.

14 3.6 Javier's daughter Amanda Zerger, who was staying with her at the time,  
15 knew Javier and Pitts were headed toward Plaintiff's residence to further menace, bully, and  
16 attack him, heard the percussion and called police to obviously make what is referred to as  
17 a "swatting" call of false inflammatory information hoping to deal Plaintiff the worst of things  
18 by the police. The police, reportedly "drifting" toward Plaintiff's call, after that upped the  
19 priority of the incident location and promptly arrived there in "SWAT" mode. King County  
20 Sheriffs Dept. decided to arrest and "hold" Plaintiff at that time and he was transported to,  
21 and held in, the King County Jail for one (1) day from December 19<sup>th</sup> to 20<sup>th</sup>, 2018.

22 3.7 Plaintiff had been arrested and jailed without adequate winter clothing and no  
23 money or mobile phone and was subsequently released from the King County Jail on the  
24 20<sup>th</sup> to make it home to Baring 65 miles away on foot. Plaintiff had walked from KC Jail in  
25 downtown Seattle out to around Maltby when he was stopped by a patrol officer concerned



1 about him walking on the highway and graciously gave him a ride to Monroe, at which point  
2 Plaintiff resumed his walk home through the city and back out onto the highway where he  
3 was stopped by another patrol officer who wanted to check things out. After that Plaintiff  
4 continued his walk home when he was approached by a good Samaritan who offered him a  
5 ride the rest of the way, which he accepted. Plaintiff alleges Defendants knew, or should  
6 have reasonably known, that they were dealing the aforementioned hardship to Plaintiff.

7 3.8 Approximately seven (7) weeks later Plaintiff received a letter in the mail  
8 dated January 31, 2019, from the Office of the King County Prosecuting Attorney, Daniel T.  
9 Satterberg, stating that he had been scheduled to be arraigned on February 13, 2019, on 1  
10 Count of Assault in the Second Degree, Case #19-1-01222-2 SEA. Plaintiff received the  
11 letter late as it was sent to his P.O. Box which he, if not expecting anything, does not  
12 necessarily check on a regular basis, and so he did not make it to the aforementioned  
13 hearing, a warrant for his arrest then was issued and he was arrested by the King County  
14 Sheriff's Dept. on February 14, 2019, at approximately 10:30 a.m. without incident at his  
15 residence at 63434 NE 196<sup>th</sup> Street, Baring, WA 98224, and transported to King County Jail  
16 and imprisoned pending arraignment and subsequent trial.

17 3.9 On March 27<sup>th</sup>, 2019, Plaintiff was temporarily released to home detention.  
18 Plaintiff's family had placed \$100 into his King County Jail detainee property for the purpose  
19 of providing him a means to travel the 65 miles home. After asking "Work Release" about  
20 obtaining his money out of property so that he might travel home, to which Plaintiff never  
21 received a clear answer, he sought out the King County Jail cashier to get his \$100 and was  
22 told by the cashier that the jail had received the money, but that it was diverted and used by  
23 the jail for other (unauthorized) purposes. Plaintiff went back to Work Release and told  
24 them the situation he encountered with the jail cashier and he then was given two (2) bus  
25 passes and instructions on which buses he needed to catch towards home, which would be

1 a bus north from downtown Seattle on Aurora (Highway 99) out to Aurora Village (around  
2 205<sup>th</sup> and Aurora), then another bus from there north to Everett, WA, where one could catch  
3 a bus east on Highway 2 as far as Goldbar, WA, which would still leave Plaintiff a 15 mile  
4 walk home to Baring.

5 3.10 Unfortunately, Plaintiff found that the bus passes given to him by Work  
6 Release to make his journey home for home detention were only good out to Aurora Village,  
7 and so Plaintiff started walking from Aurora Village towards home carrying the home  
8 detention ("HD") gear that he was given to set up/plug in when he arrived there. Plaintiff  
9 walked into the night a reported 17 miles out to Mill Creek where another good Samaritan  
10 offered him a ride the rest of the way and he arrived home at approximately 2:30 a.m. on  
11 the 28<sup>th</sup>.

12 3.11 Upon arriving home Plaintiff plugged in the HD equipment he was given and  
13 then immediately notice that his home had been broken into, items were stolen, and that the  
14 prosecution's accuser Keena Javier had trespassed and hooked her home up to his private  
15 water well and was operating it by an electrical extension cord from her residence, and that  
16 she had cut the water supply line from Plaintiff's water well to his home, and that she was  
17 digging a trench in his backyard from his well toward her property. Additionally, Plaintiff  
18 found two (2) small half-full bottles of water coated with a toxic gel on his indoor stairway,  
19 left there for somebody to pick up. Plaintiff made a call in to 911 to report this, but the police  
20 did not respond.

21 3.12 After getting some rest, Plaintiff necessarily went to get provisions and to buy  
22 air-time for his cell phone. After buying air-time for his phone, Plaintiff then called to check  
23 in with Work Release and was told that he had not plugged in his HD equipment quick  
24 enough and that he should turn himself back into the King County Jail, which he did the very  
25 next day on the 29<sup>th</sup> with \$17 and some change his pocket in anticipation that he would



1 have to make his way home again after release from his detention, but not before he  
2 disconnected Javier from his water well. Plaintiff alleges that Defendants herein, with  
3 malice of forethought, stole the \$100 travel money out of his KC Jail detainee property to  
4 deliberately cause him harm and hardship and delay his return home for HD to create  
5 conflict with Work Release expectations.

6 3.13 Although Plaintiff did not request appointment of "representation", but had no  
7 objection to the "assistance" of counsel, the Court appointed Jesse Dubow to represent him  
8 as the defense. After a short time Plaintiff felt that Mr. Dubow was not being totally  
9 transparent with him and was ignoring information and direction and was not sharing  
10 paperwork involved in his case and that he was basically uncooperative and trying to hand  
11 Plaintiff a backseat in his defense, and so on April 12, 2019, Plaintiff informed the court that  
12 he was acting "pro se" exclusively.

13 3.14 The Court noted Plaintiff's pro se demand but ignored Plaintiff's pro se status  
14 and let Mr. Dubow continue to act as Plaintiff's representation. In doing so, the Court  
15 denied Plaintiff meaningful **assistance of counsel** and of his **right to act pro se** and protect  
16 himself from any possible proclaimed representation derelict in duty, incompetent, or acting  
17 in bad faith in violation of Plaintiff's constitutional rights.

18 3.15 While detained and awaiting trial, Defendants Dubow, King County Superior  
19 Court, and Department of Social and Health Services ("DSHS") attempted to engage  
20 Plaintiff in submitting to what they termed a competency evaluation, in which Plaintiff  
21 declined to participate. Subsequently, and after substantial delay, the Court had Plaintiff  
22 transported from the King County Jail to Western State Hospital ("WSH") for a 15 day  
23 observation evaluation that was then extended to 90 days with the Court finding Plaintiff  
24 incompetent based on what could only have been a report by WSH that Plaintiff was still  
25 reserved in nature. Plaintiff was then transported back to King County Jail where he



1 remained for a couple more months before he was informed that he would be transported  
2 back to WSH to be involuntarily drugged. During the hearing where Plaintiff was informed  
3 of this, he was also informed that the drugs were extremely harmful and that they could  
4 cause very serious side affects like arthritis and diabetes, but that Defendants thought such  
5 things "could be managed." Also, the prosecution commented to the Court that maybe  
6 Plaintiff: "needed to spend some time on the civil side (at WSH)."

7 3.16 Moreover, it was obvious that Plaintiff was being threatened by the  
8 Defendants seemingly desperate to make, and/or maintain, a case against him as they  
9 brought offers of plea deals and harassing threats of poisoning and prolonged  
10 uncomfortable detention. Plaintiff also believes Defendants were intentionally trying to  
11 provoke him into defending himself against their threatened barbaric assault on his health  
12 and wellbeing so that they might "manufacture" yet another opportunity to maliciously deal  
13 him more grief and hardship.

14 3.17 Plaintiff was sent back to WSH where he endured approximately a month of  
15 extremely torturous involuntary drugging (poisoning), invasive blood testing, callous  
16 manipulation, and loss of privacy by Defendants with an agenda to loosen his tongue under  
17 their threat of vicious physical assault if he refused to submit. Plaintiff did witness the  
18 aftermath of the beating of a man by WSH where the elderly gentleman was returned to the  
19 floor saying "Look what they did." showing huge black, blue and purple contusions over his  
20 entire body. After that month Plaintiff was returned to the King County Jail to await his trial  
21 and subsequent acquittal and release on March 4, 2020.

22 3.18 Plaintiff, while wrongfully detained at the King County Jail witnessed,  
23 experienced and suffered: 1) inadequate bedding causing him bedsores; an injured coccyx,  
24 and the jail often blasted him and the unit with cold air at night through the ventilation  
25 system causing him tortured rest; 2) being forced to hydrate with tainted water (there was a

1 water scare at KC Jail at the time where bottled drinking water was brought in for a brief  
 2 time for the detainees.), and: 3) an invisible debilitating assault by penetrating rays from a  
 3 directed energy ("DE") device ("ray gun"). Plaintiff witnessed the installation of these ray  
 4 weapons in the KC Jail and suffered their prompt use upon him and others being detained.  
 5 Plaintiff alleges that Defendants; have access to, the use of, have used, are using, or are  
 6 instrumental and complicit in the use of said DE devices, and that Plaintiff has been under  
 7 constant DE attack by Defendants prior to, during, and post his detention referenced herein.

8 3.19 Upon Plaintiff's release he found that the King County Jail had again stolen  
 9 whatever cash money he had in his detainee property, the \$17 and change mentioned  
 10 above.

11 3.20 Upon arriving home after his release, Plaintiff found that his home had again  
 12 been broken into (possibly several different times), searched, damaged, trashed, and  
 13 burglarized of approximately \$25K worth of tools, equipment and personal items, and that  
 14 Javier had trespassed and reconnected her home up to his private water well. Plaintiff  
 15 made a police report as to this including a list of items taken for which insurance covered  
 16 less than half, and Javier was advised by King County Sheriff Deputy Woody Heath against  
 17 trespassing on Plaintiff's property again.

18 3.21 On April 1, 2021, Plaintiff made a special trip to Seattle to retrieve his  
 19 property, the .22 caliber pistol confiscated by the King County Sheriff's Dept. on December  
 20 19, 2018. King County Sheriff's Dept. at that time told Plaintiff they had his property, but  
 21 they were not going to release it to him nor give him a reason as to why.

#### 22 IV. INJURIES

23 4.1 Each of the above allegations/claims is/are incorporated herein by reference.

24 4.2 Plaintiff suffered wrongful arrest, wrongful prolonged torturous detention,  
 25 wrongful malicious prosecution, assault and battery, extreme invasion of his privacy, the



1 villainous search, degradation, burglarizing and poisoning of his property and home in  
2 Baring, WA, and other related hardships at the hands of the Defendants herein, brought  
3 about by the malicious, evil and recklessly false allegations initiated, fabricated, facilitated,  
4 precipitated, orchestrated, and perpetrated by the Defendants to wrongfully cause Plaintiff,  
5 and by which Defendants did wrongfully cause Plaintiff, but not limited to; pain and  
6 suffering, extreme mental anguish and emotional distress; humiliation, injury, harm,  
7 hardship, debilitation, loss of liberty, loss of reputation, loss of property, loss of privacy, loss  
8 of opportunity, and by all did cause him to be substantially set back, under color of law, in  
9 violation of Plaintiff's rights secured to him by the United States Constitution, the Supreme  
10 Law of the Land, and recognized herein by Amendments 2, 4, 5, 6, 8, 14 thereof.

11 4.3 Plaintiff was wrongfully arrested and detained by the Defendants for one (1)  
12 day from December 19, 2018, to December 20, 2018, and then wrongfully arrested and  
13 detained by the Defendants from February 14, 2019, until he was acquitted at trial on  
14 March 4, 2020, for a total wrongful detention of 386 days.

15 4.4 As a result of the acts of Defendants, and each of them, Plaintiff suffered  
16 damages in amounts to be proven at trial.

17 4.5 Plaintiff would show that the acts of Defendants herein constitute malicious  
18 prosecution, false imprisonment, false arrest, intentional infliction of emotional distress and  
19 mental anguish, and libel and slander, and reflect Defendants' malicious, intentional, willful  
20 and reckless disregard of the rights of Plaintiff that warrant a Judgment of and against  
21 Defendants for compensatory and punitive damages to Plaintiff, as well as attorney's fees in  
22 Plaintiff's favor in an amount to be proven at trial.

## 23 V. RELIEF

24 5.1 WHEREFORE Plaintiff seeks the following relief against Defendants The  
25 State of Washington and King County et al., for causing damage, injury and deprivation to

1 Plaintiff in violation of Plaintiff's civil rights in this matter in relation to King County Superior  
2 Court Case #19-1-01222-2 SEA;

- 3 A. Money damages for pain and suffering in an amount to be determined;  
4 B. Money damages for mental anguish and emotional distress in an amount to be  
5 determined;  
6 C. Reparation/compensation for property confiscated and unreturned, stolen, lost  
7 or damaged;  
8 D. Punitive damages as provided by 42 U.S.C. §1983 and other applicable law;  
9 E. Costs and reasonable attorney's fees as provided by 42 U.S.C. §1983 and other  
10 applicable law;  
11 F. For such other relief that the Court deems just and equitable.

12 **PLAINTIFF HEREBY DEMANDS A JURY TRIAL**

13 \*\*\*

14 **CERTIFICATION AND CLOSING**

15 Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my  
16 knowledge, information, and belief that this complaint: (1) is not being presented for an  
17 improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the  
18 cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for  
19 extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary  
20 support or, if specifically so identified, will likely have evidentiary support after a reasonable  
21 opportunity for further investigation or discovery; and (4) the complaint otherwise complies  
22 with the requirements of Rule 11.

23 I agree to provide the Clerk's Office with any changes to my address where case-  
24 related papers may be served. I understand that my failure to keep a current address on  
25 file with the Clerk's Office may result in the dismissal of my case.



1  
2 Date of signing: March 18, 2022.

3  
4 Signature of Plaintiff: S/ Mark F. Durbin

5 Printed Name of Plaintiff: Mark F. Durbin  
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